

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

---

UNITED STATES OF AMERICA,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case No. 1:04-cr-385 (LMB)
	)	
ALI AL-TIMIMI,	)	
	)	
<i>Defendant.</i>	)	
	)	

---

**NOTICE OF INTERVENING DEVELOPMENTS CONCERNING AL-TIMIMI'S  
EMERGENCY MOTION FOR CONDITIONAL RELEASE**

Defendant Dr. Ali Al-Timimi respectfully submits this notice of intervening developments relevant to his *Emergency Motion for Conditional Release Pending Appeal*. Dkt. No. 465.

Over the weekend, the website of the Federal Bureau of Prisons began reporting two active cases of COVID-19 among inmates at FCC Florence. The BOP also reports that another 49 inmates within the Florence complex (including two under ADMAX) have COVID-19 test results pending. That data is listed as follows:

Facility Name ▲	No. of Inmates with Completed Tests	No. of Inmates with Pending Tests	No. of Inmates with Positive Tests
FLORENCE ADMAX USP	6	2	0
FLORENCE - HIGH USP	69	41	0
FLORENCE FCI	108	6	2

See FEDERAL BUREAU OF PRISONS, *COVID-19 Inmate Test Information*, available at: <https://www.bop.gov/coronavirus/> (last visited August 3, 2020). Thus, there are now at least two inmates at the FCC Florence complex infected with COVID-19. Cf. *United States v. Harris*, Case

No. 19-cr-356, 2020 U.S. Dist. LEXIS 53632, \*16 (D.D.C. March 27, 2020) (granting Section 3145(c) relief to a defendant after a jailhouse COVID-19 case was reported, concluding that the defendant should not be required to “wait and see” if he becomes infected from COVID-19 and observing that “uncertainty cannot preclude courts from acting until the damage has been done”).

The defense also wishes to comment briefly on three additional developments:

**Dr. Conroy’s supplemental declaration.**

1. In response to new medical information obtained by defense counsel, Dr. Conroy has recently submitted a supplemental declaration stating that she no longer characterizes Al-Timimi’s hypertension as well-controlled and has “directed that additional medical steps be taken to address it.” *See Supplemental Declaration of Susan Conroy* [Dkt. No. 510] (under seal), ¶¶ 3-4. Dr. Conroy also confirms that Al-Timimi’s BMI exceeds the threshold of 30, which the CDC reports is another risk factor for severe illness from COVID-19. *See id.*, ¶¶ 9-10. Thus, both parties now acknowledge that Al-Timimi is at heightened risk for severe COVID-19 disease under CDC guidelines should he become infected.

2. Dr. Conroy also indicates that she has told Al-Timimi “that he must take affirmative steps to help manage his health,” and has “advised him to lose weight . . . , eat fewer carbohydrates, and exercise more.” *Id.*, ¶ 9. Unfortunately, this advice has limited utility at Florence ADX. On information and belief, Al-Timimi is presently allowed recreation only once per week and spends the remainder of his time solitarily confined to a 75 square-foot cell the approximate size of a parking space. He is permitted only two showers per week and receives his meals from the prison through a slot in the door, which he eats within arm’s length of the toilet. In accordance with Dr. Conroy’s advice, however, the defense attaches for this Court’s consideration an updated proposed order of conditional release, which would additionally (1)

grant Al-Timimi a furlough for outdoor exercise within a one-block perimeter of his residence, and (2) permit Al-Timimi to leave the residence to attend medical appointments.

3. Finally, Dr. Conroy also indicates that she has ordered that “Al-Timimi’s blood pressure be checked two times per week for the next 30 days.” Supplemental Conroy Decl., ¶ 7. However, undersigned defense counsel have recently received a new legal letter from their client, who reports that, as of the week of July 24, ADX medical personnel have once again discontinued his blood pressure screenings. *Cf. Declaration of Dr. Chris Beyrer, MD, MPH* [Dkt. No. 466, Ex. A], ¶ 23(d) (“Correctional facilities frequently have insufficient medical care for the population even outside times of crisis.”).

**The government’s withdrawal of its under-seal arguments.**

4. On July 13, the government noticed that it was withdrawing its under-seal arguments against Al-Timimi’s motion. *See* Dkt. No. 505 at 2-3. As such, it now reverts to its original arguments advanced in its opposition brief and during this Court’s telephonic hearing on June 11.

**The COVID-19 pandemic is only one of two “exceptional reasons” identified in Al-Timimi’s motion.**

5. Finally, the defense notes that the ongoing COVID-19 pandemic is only one of two exceptional reasons that Al-Timimi identified in his motion. Aside from COVID-19, Al-Timimi also faces a high risk of unjust confinement given that his prison sentences are now fully discharged on Counts 1-6. The remaining Counts 7-10 are the subject of active motions that present a multitude of substantial legal issues. *See* Dkt. No. 466 (opening memorandum brief) at 13-17; Dkt. No. 477 (reply brief) at 3-12.

Dated: August 3, 2020

Respectfully submitted,

/s/

Thomas Michael Huff, Virginia Bar No. 73587  
Thomas M. Huff, Attorney-at-Law  
P.O. Box 2248  
Leesburg, VA 20177  
Telephone: 703.665.3756  
Facsimile: 571.354.8985  
[thuff@law.gwu.edu](mailto:thuff@law.gwu.edu)

Jonathan Turley (*pro hac vice*)  
The George Washington University Law School  
2000 H Street, NW  
Washington, D.C. 20052  
(202) 994-7001 (telephone)  
(202) 508-6200 (facsimile)  
[jturley@law.gwu.edu](mailto:jturley@law.gwu.edu)

Attorneys for Defendant Dr. Ali Al-Timimi

**CERTIFICATE OF SERVICE**

I certify that on August 3, 2020, I will file the foregoing document on the CM/ECF system, which will then serve it by electronic notification on all parties of record. This Court's designated Classified Information Security Officer has confirmed that the present motion may be filed on the public docket.

/s/

---

Thomas Michael Huff, Virginia Bar No. 73587  
Thomas M. Huff, Attorney-at-Law  
P.O. Box 2248  
Leesburg, VA 20177  
Telephone: 703.665.3756  
Facsimile: 571.354.8985  
[thuff@law.gwu.edu](mailto:thuff@law.gwu.edu)